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LABOUR & E.S.I. DEPARTMENT

NOTIFICATION

The 27th December 2024

S.R.O. No. 2/2025—In pursuance of Section 17 of the Industrial Disputes Act, 1947 (14 of 1947) the Award, dated the 11th December 2024 passed in the ID Case No. 02 of 2017 by the Presiding Officer, Industrial Tribunal, Bhubaneswar to whom the industrial dispute between the Mangilal Rungta Employees' Union, (Ferri Alloys Division) At Tulasidiha, P.O. Meramundali, Dist. Dhenkanal and the Management of M/s Rungta Sons Pvt. Ltd., (previously named as M/s Mangilal Rungta), Ferro Alloys Division, At Tulasidiha, P.O. Meramundali, Dist. Dhenkanal was referred to for adjudication is hereby published as in the schedule below.

SCHEDULE

IN THE INDUSTRIAL TRIBUNAL, BHUBANESWAR

INDUSTRIAL DISPUTE CASE NO. 02 of 2017 (under Section 33-a of I.D. Act)

Dated the 11th December 2024

Present :

Shri Benudhar Patra, LL.M.,
Presiding Officer,
Industrial Tribunal,
Bhubaneswar.

Between :

Mangilal Rungta Employees' Union, (Ferro Alloys Division) At Tulasidiha, P.O. Meramundali, Dist. Dhenkanal. . . Complainant

And

Management of M/s Rungta Sons Pvt. Ltd., (previously named as M/s Mangilal Rungta), Ferro Alloys Division, At Tulasidiha, P.O. Meramundali, Dist. Dhenkanal. . . Opposite Party

Appearance :

Shri Sushant Dash, Advocate	. .	For the Complainant
Shri D. P. Nanda, Sr. Advocate & Associates	. .	For the Opposite Party

AWARD

The General Secretary, Mangilal Rungta Employees' Union (hereinafter referred to as 'the Complainant-Union)' has preferred the present application under Section 33-A of the Industrial Disputes Act,1947 (for short 'the Act') alleging contravention of Section 33 of the Act by the Opposite Party-Management during pendency of ID. Case No.18 of 2015 before this Tribunal.

2. The claim as putforth by the Complainant-Union in its complaint petition, in short, is that the above-named Opposite Party-Management in order to undertake its activities of manufacturing and trading of Ferro Alloys, Silicon Manganese and Ferro Manganese has engaged work force both regular as well as contract labourers and in due course has extended its business not only in the State of Odisha but also in the State of Jharkhand. It is stated that to safeguard the interest of the workers in the category of Class-III and Class-IV, who are mostly project affected and land-outstee persons and are being paid through vouchers and/or continuing under namesake contractor's establishment and to have better bargaining power on behalf of them, the Complainant-Union was formed in the year 2012 and registered under the Trade Unions Act,1926 to espouse the cause of the said employees from time to time with regard to their various service conditions/ benefits. It is stated that on 11th April 2012 the concerned 29 disputants who are land outstees gave a joint representation to the Unit Head demanding therein to regularise their service and also to give them Annual increment which was due from March 2012 followed by series of representations to the District Administration and the Labour Authorities and ultimately the matter was admitted to conciliation and on failure thereof a reference was made by the Government on 24th September 2015 which was registered as I.D. Case No.18 of 2015 in the file of this Tribunal. It is alleged during pendency of such dispute before this Tribunal the O.P.-Management on false pretext and referring to some incident of April 2015 and August 2015 clamped lock out of the factory w.e.f. 20th May 2016 styling it as 'suspension of work' and in an illegal manner applied the principles of "No work no pay" during the period. It is alleged by the Complainant-Union that the said act on the part of the O.P.-Management is nothing but contravention of the provisions of Section 33 of the Act and as such it needs to be decided in the present complaint as to if the action of the O.P.-Management in declaring lock out of the Factory w.e.f. 20th May 2016, during pendency of I.D. Case No.18 of 2015 before this tribunal, is legal and justified and if not, the relief(s) to which the concerned disputants are entitled to, treating the instant complaint to be a reference made by the appropriate Government.

3. The O.P.-management entered appearance in the dispute and filed its show cause challenging the maintainability of the complaint on the following grounds :—

(i) that, the complainant Union has got no *locus standi* to file the complaint on behalf of the disputants as the provision of Section 33-A does not authorise a Union to file a complaint under Section 33-A, as has been done in the present case;

(ii) that, a copy of the reference of the dispute in I.D. Case No.18 of 2015 having not been served upon the management, it is not correct to assert that knowing fully well about the pendency of the reference the management has contravened the provisions of Section 33 of the Act;

(iii) that, the disputes involved in I D. Case No.18 of 2015 having been settled between the parties vide memorandum of settlement dated the 1st October 2015 prior to submission of pleadings

by the Complainant Union, it cannot be said that there has been a contravention of the provisions of Section 33 on the part of the management in declaring suspension of work w.e.f. 20th May 2016, which was declared as a result of illegal strike by the representatives of the Complainant-Union and its associates;

(iv) that, as per the proposition of law, a mere reference made by the Government does not amount to pendency of dispute and as such in the fact situation the declaration of suspension of work cannot be termed to be a change of service conditions of the workers.

4. The Complainant-Union filed a rejoinder to the show cause of the management mostly reiterating its stand taken in the complaint petition with further assertion that since in I.D. Case No.18 of 2015 the Complainant-Union is representing the cause of its members and there is a common cause/allegation of change of service condition i.e. declaring lock out of the factory w.e.f. 20th May 2016, the present complaint is maintainable at the instance of the Complainant-Union on behalf of the affected workers. Further assertion of the Union is that the management has taken a false stand that the reference of the dispute in I.D. Case No.18 of 2015 was not within its knowledge although it was very much aware that pursuant to the representation of the disputants dated the 11th April 2012, the Conciliation Officer had issued Form-D i.e. notice of conciliationon 21st September 2012 and on failure of such conciliation report was submitted to the Government and based on such report the Government had made the reference vide order dated the 24th September 2015 which was registered as I.D. Case No.18 of 2015 in the file of the Tribunal. It is stated that as the reference in I.D. Case No.18 of 2015 did not contain the second demand of the Union with regard to regularisation of service of the disputants, at the instance of the Union a representation was made to the Government for issuance of a corrigendum/addendum and the same is still pending for consideration at the Government level and in that view of the matter the assertion of the management that in view of the settlement dated the 1st October 2015 nothing remains to be adjudicated and the present 'lis' is completely misleading. The Complainant Union also disputed the averment with regard to the assertion of the management that suspension of work was as a result of illegal strike by the Union representatives and its associate workers. Lastly it is stated in the rejoinder that the complaint petition filed at the instance of the Union is in accordance with law and has been filed for contravention of Section 33 of the Act, and as such an Award may be passed holding the action of the management to be illegal and unjustified and they be paid their wages during the period of lock out of the factory.

5. In view of the pleadings of the parties, the following three issues have been framed by this Tribunal:

ISSUES

(i) Whether the Application under Section 33-A of the I.D. Act is maintainable ?

(ii) Whether the action of the Opp.Party-Management in declaring lock out of its Factory w.e.f. 20th May 2016 without seeking prior permission of this Tribunal is legal and/or justified ?

(iii) If not, what relief the concerned workmen are entitled to ?

6. Before proceeding to decide the merit of the dispute, it is felt appropriate to determine first the Issue No.1 which relates to the question of maintainability of the application under Section 33-A of the Act. In determining the above aspect, at the out-set the Tribunal is required to see as to if there has been contravention of the provisions of Section 33 of the I.D. Act on the part of the

management while declaring suspension of work w.e.f. 20th May 2016. In the context, it is contended by the learned Sr. Counsel for the O.P.-Management that as because the O.P.-Management was not aware about the reference in I.D. Case No.18 of 2015 and could know about the same only after receipt of Ext. 5 along-with the attached letter, Ext. 4, the question of seeking approval from the Tribunal under Section 33 of the Act in the matter of declaration of suspension of work of its factory w.e.f. 20th May 2016 did not arise at all and moreover, the disputes involved in I.D. Case No.18 of 2015 having been settled between the parties in presence of the Labour Authority on 1st October 2015 vide Ext. A and that too before filing of claim statement by the Union in I.D. Case No.18 of 2015, it cannot be said that the action of the O.P.-Management in declaring suspension of work of its factory w.e.f. 20th May 2016 was in contravention of the provisions of Section 33 of the Act. *Per contra*, it is submitted on behalf of the Complainant-Union that the plea of the O.P.-Management that it was completely unaware about the reference in I.D. Case No. 18 of 2015 is not at all acceptable, the reference in I.D. Case No.18 of 2015 is the outcome of the demands raised by the Complainant-Union in respect of the casual labourers which was duly conciliated upon by the labour machinery after issuance of notice to both the parties for conciliation and moreover on failure of conciliation when copies of the reference in I.D. Case No.18 of 2015 were sent not only to the Complainant-Union but also to the O.P.-Management and other authorities by the Government, it cannot be conceived in any manner that pendency of the reference in I.D. Case No.18 of 2015 before the Tribunal was not within the knowledge of the O.P.-management. In the aforesaid background, it is submitted, there being apparent contravention of the provisions of Section 33 of the Act by the O.P.-Management while declaring the suspension of work, the application laid in the Forum is maintainable.

7. To arrive at a conclusion on the above point the records in ID Case No.18 of 2015 is perused by the Tribunal. On scrutiny, it is found from the failure report attached to the reference that consequent upon raising of a dispute by Shri Ranjit Kumar Sahoo and 28 others before the ALO, Dhenkanal, notices for conciliation were issued to both the parties and conciliations were held on different dates. It further transpires that while the conciliation was on, the disputants formed a Union namely Mangilal Rungta Employees' Union and later on a demand for non-payment of annual increment for the years from 2011-12 to 2013-14 was submitted. As it reveals further from the conciliation failure report the management by participating in the said conciliation submitted its written views, but ultimately the conciliation having been failed a report to that effect was submitted to the Government on 31st December 2014 by the Conciliation Officer, which resulted with the reference in the I.D Case No.18 of 2015. The reference which was initially made by the Government for adjudication was to the following effect :—

> "Wheather the demand made by the casual workman of Mangilal Rungta (Ferro Alloys Division), At Tulasidiha, P.O. Meramundali, Dist. Dhenkanal for annual increment/ wage hike is legel and/or justified ? If so, what should be the quantum ?"

Materials are placed by the O.P.-management before this Tribunal that the copy of reference in I.D. Case No.18 of 2015 was not served upon it either personally or Registered Post, but at the same time it transpires from Ext.5, that the DLO, Dhenkanal had informed the management regarding pendency of I.D. Case No.18 of 2015 before this Tribunal and so also the O.P- Management being well aware about the pendency of the reference in I.D. Case No.18 of 2015 replied to the DLO, Dhenkanal vide its letter Ext. 14 that unless claim statement in the reference is submitted by the Union, mere reference of the matter to the Tribunal doesn't necessarily mean commencement

of proceeding. On the face of such evidence emanating from the proceedings in I.D. Case No.18 of 2015, as referred to above, and the documentary evidence Ext.5 read with Ext. 14, it is hard to believe that the O.P.-Management was unaware about pendency of the reference before the Tribunal before declaring suspension of work of its Factory on 20th May 2016.

8. It has also been argued on behalf of the O.P.- Management that even if a proceeding is held to be pending before the Tribunal at the time of declaration of the suspension of work, yet the Complainant has failed to establish that as per Rule 10(B) of the Industrial Disputes Rules,1959 the proceeding which was pending before the Tribunal was commenced so as to attract the provision of Section 33 of the Act. On perusal of Section 33 of the Act, the Tribunal is unable to sustain the argument simply for the reason that the Section 33 refers to the pendency of a proceeding before the Tribunal and nowhere it specifies that for invoking such provision an aggrieved employee has to justify that after filing of the claim statement the proceeding in the reference can be said to be commenced. Considering the statutory meaning as assigned under Section 33 of the Act, this Tribunal is of the view that pendency of a proceeding before the Tribunal being the *sine qua non*, the submissions laid on this score is not tenable. Similarly, pendency of a proceeding being the prime. consideration while dealing-with a complaint under Section 33-A of the Act, the contention that the disputes in I.D. Case No.18 of 2015 are no more survive for consideration, the same being settled between the parties vide Ext. A is of no help to the O.P.-Management, even if under the Industrial Law settlement of disputes stands in a better footing than adjudication. Further, looking to the demands of the Union and the settlements arrived at under Ext. A it is not possible to form an opinion that by virtue of settlement arrived at between the parties under Ext. A, the demands as raised by the Union, which were initially referred to by the Government and subsequently made in shape of a corrigendum by virtue of orders of the Hon'ble Court in I.D. Case No.18 of 2015 all the demands of the Union were taken care of under Ext. A. In view of the discussions held above, there appears a contravention of the provisions of Section 33 of the Act, which was a pre-condition for the O.P.-Management for declaring suspension of work w.e.f. 20th May 2016.

9. Much emphasis is, however, laid on behalf of the O.P.-Management that the instant complaint filed under Section 33-A of the Act is not maintainable in this Forum; the same being filed by the Complainant-Union and not an employee in his individual capacity. The learned Senior Counsel representing the Opposite Party-Management drew attention of the Tribunal to the provision of Section 33-A of the Act and contended that the said provision being akin to the provision of Section 2-A (2) of the Act, the complaint is supposed to be filed by an individual workman/employee and not by a Union. To buttress his argument, learned Sr. Counsel cited a decision of our own Hon'ble High Court, reported in 1992(I)LLJ 414 [Orissa Oil India Mazdoor Union *Vs.* Union of India and others]. The learned counsel representing the Complainant-Union, on the other hand, submitted that in I.D. Case No.18 of 2015 the Union having espoused the cause of the disputants, the technical objection raised on this score by the O.P.-Management be rejected, as the instant complaint is one which arose during pendency of I.D. Case No.18 of 2015 before this Tribunal. In order to come to a conclusion on this point, it is felt apposite to refer to the provision of Section 33-A of the Act, which speaks :-

> "33-A. Special provision for adjudication as to whether conditions of service, etc. changed during pendency of proceedings.
>
> Where an employer contravenes the provisions of Section 33 during the pendency of proceedings before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, any employee aggrieved by such contravention, may make a complaint in writing, in the prescribed manner,

(a) to such conciliation officer or Board, and the conciliation officer or Board shall take such complaint into account in mediating in, and promoting the settlement of, such industrial dispute ; and

(b) to such arbitrator, Labour Court, Tribunal or, National Tribunal and on receipt of such complaint, the arbitrator, Labour Court, Tribunal or National Tribunal, as the case may be, shall adjudicate upon the complaint as if it were a dispute referred to or pending before it, in accordance with the provisions of this Act and shall submit his or its 'Award to the appropriate Government and the provisions of this Act shall apply accordingly.

On perusal of the statutory provision as contained under Section 33-A of the Act, it can unambiguously be said that during pendency of a proceeding before a conciliation officer, Board, an arbitrator, a Labour Court, Tribunal or National Tribunal, if the employer makes a change in an employee's work conditions, such employee aggrieved by the contravention, may make a complaint in writing in the prescribed manner as provided under Section 33-A of the Act. But, on scrutiny of the instant application it is found that by the alleged action of the O.P.-Management the Complainant-Union being aggrieved with such action has moved the petition alleging contravention of Section 33 of the Act by the management, which is not at all in consonance with the statutory provision of the Act.

10. In view of the above, it is held that though there has been a contravention of the provisions of Section 33 of the Act on the part of the O.P.-Management, yet the complaint having been preferred by the Union and not by any aggrieved employee as mandated by the Act, the same is not maintainable in this Forum. On the face of the Statutory provision, the contention of the Union that this is a technical plea advanced by the O.P.-Management does not hold good.

Issue No. (i) is answered accordingly.

11. *Issue No.(ii)*—It is not in dispute that the industry was not functional since June/August, 2011 and the contractual/casual workers were in receipt of their salaries as well as other benefits declaration of suspension of work of its factory vide notice dated the 20th May 2016, Ext. 1. Though it is the consistent stand of the O.P.-Management that such a step was taken considering the illegal strike at the instance of the Complainant-Union and to that effect much evidence is laid on behalf of both the parties to substantiate their respective stand, yet looking to the issue raised by the complainant-union questioning the legality and justifiability of declaration of suspension of work by the O.P.-Management and for that matter claiming relief in their favour is found to be not a complete resolution of the 'lis', rather any finding on this issue would create more industrial unrest and would amount to unsettle the settled position, as by the action of declaration of suspension of work by the O.P.-Management not only the disputants belonging to the Union, but also employees/ workers in general might have suffered a lot. Since the issue raised in the present complaint has a bearing on the interest of all the employees/workers of the O.P.-Management for their sufferance due to declaration of suspension of work of the factory w.e.f. 20th May 2016, the same, in my view, would have been properly addressed had a reference been made by the Government under Section 10 & 12 of the Act. Although in a complaint under Section 33-A of the Act the Tribunal is required to pass an award treating it to be a reference made under Section 10 and 12 of the Act, yet for the above-stated reasons, I do not feel it appropriate to make a finding on this issue as the result thereof, in absence of adequate evidence, would be of far reaching consequence.

12. *Issue No. (iii)*—In view of the discussions held under Issue No.(i) and Issue No. (ii), complainant-union is not entitled to any relief in the present proceeding.

Dictated and corrected by me.

BENUDHAR PATRA
11-12-2024
Presiding Officer
Industrial Tribunal, Bhubaneswar

BENUDHAR PATRA
11-12-2024
Presiding Officer
Industrial Tribunal, Bhubaneswar

[No. 11134—LESI-IR-ID-0015/2015-LESI]

By order of the Governor

NITIRANJAN SEN

Additional Secretary to Government

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